

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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ZONEPERFECT NUTRITION COMPANY,	:	
	:	CIVIL ACTION
Plaintiff,	:	NO. 04-10760 (REK)
	:	
v.	:	
HERSHEY FOODS CORPORATION, HERSHEY	:	
CHOCOLATE & CONFECTIONERY CORPORATION	:	
and BARRY D. SEARS,	:	
	:	
Defendants.	:	
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HERSHEY FOODS CORPORATION and HERSHEY	:	
CHOCOLATE & CONFECTIONERY	:	
CORPORATION,	:	
	:	
Counterclaim-Plaintiffs,	:	
	:	
v.	:	
ZONEPERFECT NUTRITION COMPANY,	:	
	:	
Counterclaim-Defendant.	:	
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HERSHEY'S INITIAL RULE 26 (a)(1) DISCLOSURES

Defendants Hershey Foods Corporation and Hershey Chocolate & Confectionery Corporation (together "Hershey"), pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, hereby submit the following listed initial disclosures in connection with the above styled and numbered action:

1. Rule 26(a)(1)(A) Disclosure

To the best of Hershey's knowledge, the following witnesses may have discoverable information which may be used to support Hershey's claims or defenses:

- a. The following people are likely to have discoverable information regarding Hershey's decisions as to the selection, creation and adoption of the SMART ZONE mark, as well as Hershey's registration of the SMART ZONE mark, which Hershey may use to support its claims or defenses:
 - i. Sylvia Buxton, Marketing Manager, Snacks Division, Hershey Foods Corp.¹
 - ii. Andrew England, Vice President and General Manager, Snacks Division, Hershey Foods Corp.
 - iii. Tom Hernquist, Chief Marketing Officer, Hershey Foods Corp.
 - iv. Rachel Reed, Associate Marketing Manager, Snacks Division, Hershey Foods Corp.
 - v. Lois Duquette, Senior Counsel, Hershey Foods Corp.
 - vi. Burton Snyder, Senior Vice President, General Counsel and Secretary, Hershey Foods Corp.
 - vii. Martha Saraduke, Counsel, Hershey Chocolate & Confectionery Corp., 4860 Robb Street, Suite 204, Wheat Ridge, Colorado 80033, (303) 463-6552.
- b. The following people are likely to have discoverable information regarding the marketing of the SMART ZONE bar, which Hershey may use to support its claims or defenses:
 - i. Sylvia Buxton, Marketing Manager, Snacks Division, Hershey Foods Corp.
 - ii. Andrew England, Vice President and General Manager, Snacks Division, Hershey Foods Corp.
 - iii. Tom Hernquist, Chief Marketing Officer, Hershey Foods Corp.
 - iv. Rachel Reed, Associate Marketing Manager, Snacks Division, Hershey Foods Corp.
- c. The following people are likely to have discoverable information regarding market research relating to the nutrition bar industry and/or the trademarks at issue in this case, which Hershey may use to support its claims or defenses:

¹ All Hershey Foods Corporation employees are located at the Hershey offices in Hershey, PA and can be reached at (717) 534-4200.

- i. Andrew England, Vice President and General Manager, Snacks Division, Hershey Foods Corp.
 - ii. Robert Goodpaster, Vice President, Integrated Business Intelligence, Hershey Foods Corp.
 - iii. David Hoover, Staff Research Analyst, Production Planning & Deployment, Hershey Foods Corp.
- d. The following people are likely to have discoverable information regarding Hershey's potential acquisition of ZonePerfect Nutrition Co., which Hershey may use to support its claims or defenses:
 - i. Christopher Baker, C.P. Baker & Co., 120 Boylston Street, Suite 800, Boston, MA 02116.
 - ii. Jeff Edelman, Director of Corporate Development, Hershey Foods Corp.
 - iii. Dennis Eshleman, Vice President, Strategy and Innovation, Hershey Foods Corp.
 - iv. Richard Lenny, Chief Executive Officer, Hershey Foods Corp.
 - v. Lois Duquette, Senior Counsel, Hershey Foods Corp.
 - vi. Burton Snyder, Senior Vice President, General Counsel and Secretary, Hershey Foods Corp.
- e. The following people are likely to have discoverable information regarding the April 1, 2003 meeting at Radius Restaurant in Boston, MA, which Hershey may use to support its claims or defenses:
 - i. Christopher Baker, C.P. Baker & Co., 120 Boylston Street, Suite 800, Boston, MA 02116.
 - ii. Dennis Eshleman, Vice President, Strategy and Innovation, Hershey Foods Corp.
 - iii. George Jochum, Zone Labs, 222 Rosewood Drive, Suite 500, Danvers, MA 01923.
 - iv. Richard Lenny, Chief Executive Officer, Hershey Foods Corp.
 - v. Dr. Barry Sears, Zone Labs, 222 Rosewood Drive, Suite 500, Danvers, MA 01923.
 - vi. Douglas Sears, Zone Labs, 222 Rosewood Drive, Suite 500, Danvers, MA 01923.
- f. The following people are likely to have discoverable information regarding Hershey's negotiations with Dr. Sears, which Hershey may use to support its claims or defenses:
 - i. Andrew England, Vice President and General Manager, Snacks Division,

- Hershey Foods Corp.
 - ii. Dennis Eshleman, Vice President, Strategy and Innovation, Hershey Foods Corp.
 - iii. Dr. Barry Sears, Zone Labs, 222 Rosewood Drive, Suite 500, Danvers, MA 01923.
- g. The following people are likely to have discoverable information regarding the nutritional content and composition of Hershey's SMART ZONE bar and/or plaintiff's ZONE PERFECT bar and the bars' compliance with the Zone Diet, which Hershey may use to support its claims or defenses:
 - i. Joan Apgar, Staff Scientist, Hershey Foods Corp.
 - ii. Daniel Azzara, Vice President, Research and Development, Hershey Foods Corp.
 - iii. Christopher Baker, C.P. Baker & Co., 120 Boylston Street, Suite 800, Boston, MA 02116.
 - iv. Julie Emsing, Associate Research Scientist, Food Science, Hershey Foods Corp.
 - v. Dr. Barry Sears, Zone Labs, 222 Rosewood Drive, Suite 500, Danvers, MA 01923.
- h. One or more individuals at the following companies, entities or organizations are likely to have discoverable information regarding the registration and/or use of any trademark or logo that includes, in whole or in part, the term ZONE with respect to food and/or nutritional products or services, which Hershey may use to support its claims or defenses:
 - i. Dr. Barry Sears
 - ii. Better Healthlab
 - iii. Aqueous Labs
 - iv. Bagel Zone
 - v. C&C Research & Development
 - vi. Zones
 - vii. Jasper Foods
 - viii. Candy Zone
 - ix. Lipton
 - x. Tech International
 - xi. Restaurant Zone
 - xii. Cone Zone
 - xiii. Worldwide Sport Nutritional Supplements
 - xiv. Jel Sert
 - xv. The Delivery Zone
 - xvi. Bob Evans

- xvii. Royal Source Inc.
- xviii. Earth Zone
- xix. Energy Zone
- xx. Dr. Kenneth Koenig
- xxi. Fitness Zone
- xxii. Sales Force Won
- xxiii. Concord Confections
- xxiv. Performance Zone Fitness and Nutrition
- xxv. Natures Sunshine Products
- xxvi. Morris National
- xxvii. Health Zone
- xxviii. Vitacost.com
- xxix. Omni Nutraceuticals
- xxx. Kandy Zone
- xxxi. Life Zone
- xxxii. Low Zone
- xxxiii. Dynamic Essentials
- xxxiv. Muscle Zone USA
- xxxv. Mark Bounds
- xxxvi. Kiwitech
- xxxvii. Nature's Zone
- xxxviii. Danny O'Shea
- xxxix. Heide Odette
- xl. Nutrition Zone
- xli. Weider Nutrition
- xlii. MTM Enterprises
- xliii. Jera's Juice
- xliv. Matrix Health Products
- xlv. Pretzel Zone
- xlvi. Nutribiotic
- xlvii. Pepsico
- xlviii. Met-RX Substrate Technology
- xlix. S&D Coffee
- l. Snack Zone
- li. Interstate Brands
- lii. Linda Wie
- liii. Jasper Foods
- liv. Oralabs
- lv. D P Dough
- lvi. Supplement Zone
- lvii. Descrt Delights
- lviii. Sweet Zone
- lix. The Donut Zone

- lx. Boston Brownie
- lxi. The Freeze Zone
- lxii. The Delivery Zone
- lxiii. J&J Snack Foods
- lxiv. Nature's Sunshine Products
- lxv. Otis Spunkmeyer
- lxvi. S.P. INTERNATIONAL
- lxvii. Eunjoo Oh
- lxviii. D P Dough
- lxix. R&A Imports
- lxx. Jolt
- lxxi. Platinum Fitness
- lxxii. Pure Distributors
- lxxiii. MJ Holdings
- lxxiv. Nestle
- lxxv. InterACTIVE Nutrition International Inc.

2. Rule 26(a)(1)(B) Disclosure

Following is a description by category of documents, data compilations and tangible things that are in the possession, custody or control of Hershey and that Hershey may use to support its claims or defenses. All documents are located at Hershey Foods Corporation, 100 Crystal A Drive, Hershey, PA 17036, unless otherwise indicated:

- a. Documents relating to the selection and adoption of the SMART ZONE mark.
- b. Trademark searches relating to marks that include the term ZONE.
- c. Representative samples of marketing materials bearing the SMART ZONE mark.
- d. Market research materials regarding the market for nutritional bars and the trademarks at issue in this case.
- e. Trademark file for the SMART ZONE trademark application.
- f. Documents regarding the potential marketing and advertising plans of the SMART ZONE mark.
- g. Documents relating to the development of the SMART ZONE bar.
- h. U.S. Patent & Trademark Office file for the ZONE PERFECT mark.

- i. Documents relating to the potential acquisition of ZonePerfect.
- j. Documents relating to Hershey's negotiations with Dr. Sears culminating in the agreement between Hershey and Dr. Sears.
- k. Documents relating to third party uses of the term ZONE.

3. Rule 26(a)(1)(C) Disclosure

Hershey has not yet made any computation of damages or attorneys' fees it has incurred or will incur as a result of this action and Hershey's counterclaims, but reserves its right to seek attorneys' fees under 15 U.S.C. § 1117, M.G.L. c. 93A or any other applicable statute.

4. Rule 26(a)(1)(D) Disclosure

Hershey possesses a Self Insured Excess Liability Policy issued by the Travelers Property Casualty Company of America. Hershey has placed that entity on notice of this action. The insurance policy is available for inspection and copying upon request.

Hershey reserves the right to supplement these disclosures pursuant to Fed. R. Civ. P.

26(a)(1).

Dated: May 10, 2004

MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.



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*Attorneys for Defendants and Counterclaim-
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and Hershey Chocolate & Confectionery
Corp.*

**I hereby certify that a true copy of the above
document was served upon the attorney of
each party by mail/hand on:**

May 10, 2004 